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U.S.D.C. Atlanta

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA NOV 27 2009
ATLANTA DIVISION

JAMES N. HATTEN, CLERK
By: Deputy Clerk

THE FLAG COMPANY, a
Georgia Corporation,
Plaintiff,

vs.

STEVEN A CHAN, LLC (d/b/a FIVE
STAR FLAGS and/or VIA5), a
California Limited Liability Company,
and STEVEN A. CHAN, a California
resident,
Defendant

Case No.: 1:09-CV-1880

ANSWER TO COMPLAINT and AFFIRMATIVE DEFENSES

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW Specially appearing Defendant STEVEN A. CHAN ("Chan"), and files with the Court Chan's Answer and Affirmative Defenses to The Flag Company (Plaintiff) Complaint for Trademark Infringement, Deceptive Trade Practices, and Cybersquatting as follows:

1. Chan denies as stated, all the allegations contained in Paragraph 1 of Plaintiff's Complaint. Further answered, Chan admits the Complaint purports to assert claims for various causes of action, which claims are denied. Chan admits Complaint seeks various forms of relief, and Chan denies that Plaintiff is entitled to any such relief. All allegations of Paragraph 1 of Plaintiff's complaint not specifically herein admitted are denied.

ANSWER TO COMPLAINT and AFFIRMATIVE DEFENSES

1 2. Chan is without knowledge or information sufficient to form a belief as to
2 the truth of the allegations contained in Paragraph 2 of Plaintiff's Complaint.

3 3. Chan denies as stated the allegations contained in Paragraph 3 of the
4 Plaintiff's Complaint. By way of further answer, Chan states that Steven A. Chan
5 LLC has been formally dissolved, and is no longer a legal entity.

6 4. Chan admits he is a resident of the State of California who resides at
7 720A Center Street, Costa Mesa, CA 92627. The remaining allegations are denied.

8 5. The allegations contained in paragraph 5 of Plaintiff's Complaint are legal
9 conclusions to which no response is required. To the extent that a response is
10 required, the allegations contained in Paragraph 5 of Plaintiff's Complaint are
11 denied.

12 6. Chan denies as stated the allegations contained in Paragraph 6 of the
13 Plaintiff's Complaint. By way of further answer, Chan states that Steven A. Chan
14 LLC has been formally dissolved, and is no longer a legal entity.

15 7. Chan denies this court has personal jurisdiction over Chan. Those
16 allegations that are legal conclusions do not require a response. All remaining
17 allegations contained in Paragraph 7 of Plaintiff's Complaint are denied.

18 8. The allegations in Paragraph 8 of Plaintiff's Complaint are legal
19 conclusions to which no response is required.

20 9. Chan is without knowledge or information sufficient to form a belief as to
21 the truth of the allegations contained in Paragraph 9 of Plaintiff's Complaint.

22 10. Chan is without knowledge or information sufficient to form a belief as
23 to the truth of the allegations contained in Paragraph 10 of Plaintiff's Complaint.

24 11. Chan is without knowledge or information sufficient to form a belief as
25 to the truth of the allegations contained in Paragraph 11 of Plaintiff's Complaint.
26

1 12. Chan is without knowledge or information sufficient to form a belief as
2 to the truth of the allegations contained in Paragraph 12 of Plaintiff's Complaint.

3 13. Chan is without knowledge or information sufficient to form a belief as
4 to the truth of the allegations contained in Paragraph 13 of Plaintiff's Complaint.

5 14. Chan is without knowledge or information sufficient to form a belief as
6 to the truth of the allegations contained in Paragraph 14 of Plaintiff's Complaint.

7 15. Chan is without knowledge or information sufficient to form a belief as
8 to the truth of the allegations contained in Paragraph 15 of Plaintiff's Complaint.

9 16. Chan denies as stated the allegations contained in Paragraph 16 of the
10 Plaintiff's Complaint. By way of further answer, Chan states that in the 2002-2007,
11 Chan ordered that approximate amount of 12 inch by 18 inch American flags, over
12 hundreds of Purchase Orders, 95% of which were shipped 'blind-drop' from
13 Plaintiff's Georgia shipping room to Chan's Customers.

14 17. Chan denies as stated the allegations contained in Paragraph 17 of the
15 Plaintiff's Complaint. By way of further answer, Chan states Chan ceased
16 purchasing American flags from Plaintiff under the threat of this lawsuit in the
17 summer of 2009.

18 18. Chan denies as stated the allegations contained in the first sentence of
19 Paragraph 18 of the Plaintiff's Complaint. Chan denies as stated the second
20 sentence of Paragraph 18 of the Plaintiff's Complaint.

21 19. Chan denies as stated the allegations contained in the first sentence of
22 Paragraph 19 of the Plaintiff's Complaint. All remaining allegations in Paragraph
23 19 of Plaintiff's Complaint are denied.

24 20. Chan denies as stated the allegations in Paragraph 20 of Plaintiff's
25 Complaint. By way of further answer, Chan manufactures American flags.
26 American flags SIZES are standardized across the American flag manufacturing

1 industry as well as the consuming markets, and Chan manufactures according to
2 industry practice with regard to sizes, customary to the American flag buying
3 market. By way of further answer, Chan states all 'modern' American flags are
4 visually similar as it is the 'current' codified National flag of the United States of
5 America. (In other words, these are the 50-star versions of the United States flag.)
6 Chan denies the allegation in the last sentence of Paragraph 20 of the Plaintiff's
7 Complaint.

8 21. Chan denies as stated the allegations contained in Paragraph 21 of the
9 Plaintiff's Complaint.

10 22. Chan denies as stated the allegations in Paragraph 22 of Plaintiff's
11 Complaint.

12 23. Chan denies as stated the allegations in Paragraph 23 of Plaintiff's
13 Complaint. To answer further, any Georgia orders placed by Chan's Customers
14 were fulfilled by Plaintiff blind-drop shipping direct from Plaintiff's Georgia
15 shipping room.

16 24. Chan admits, as a US flag manufacturer (manufacturing that specific flag
17 that is known as 'the flag' of the United States), he is a direct manufacturing
18 competitor of Plaintiff since 2002, and within the subject matter of this suit – those
19 allegations of bad conduct in relation to the sales of those American flags, Chan
20 markets to specific industries in competition with Plaintiff.

21 25. Chan denies the allegations in Paragraph 25 of the Plaintiff's Complaint.
22 By way of further answer, Chan does not control the search engine result pages of
23 any major search engine, for Chan's web sites or any other web sites. Google,
24 Yahoo, and Bing! Control those search engine result pages, and other search
25 engines rely on these results; and further Chan does not control any 'search
26 engine's' 'result pages' except those search engines under his control.

1 26. Chan is without knowledge or information sufficient to form a belief as
2 to the truth of the allegations contained in Paragraph 26 of Plaintiff's Complaint.
3 By way of further answer, the allegations in Paragraph 26 of Plaintiff's Complaint
4 are legal conclusions to which no response is required.
5

6 **COUNT 1**

7 27. Chan incorporates by reference his responses to Paragraphs 1 through 26
8 of their Answer and Defenses as if set forth fully herein.

9 28. The allegations contained in paragraph 28 of Plaintiff's Complaint are
10 legal conclusions to which no response is required. By way of further answer, upon
11 information and belief, this allegation is false.

12 29. The allegations contained in paragraph 29 of Plaintiff's Complaint are
13 legal conclusions to which no response is required. By way of further answer, upon
14 information and belief, this allegation is false.

15 30. Chan denies the allegations in Paragraph 30 of Plaintiff's Complaint.

16 31. Chan denies the allegations in Paragraph 30 of Plaintiff's Complaint.

17 32. Chan admits he was the Managing Member of the now dissolved
18 Company, and was the altar ego of the company. Notwithstanding, Chan further
19 denies the allegations as stated.

20 33. The allegations contained in paragraph 28 of Plaintiff's Complaint are
21 legal conclusions to which no response is required.

22 34. Chan denies the allegations in Paragraph 34 of Plaintiff's Complaint.

23 35. Chan denies the allegations in Paragraph 35 of Plaintiff's Complaint.

24 **COUNT 2**

25 36. Chan incorporates by reference his responses to Paragraphs 1 through 35
26 of their Answer and Defenses as if set forth fully herein.

1 37. Chan denies the allegations in Paragraph 37 of Plaintiff's Complaint.

2 38. Chan denies the allegations in Paragraph 38 of Plaintiff's Complaint.

3 39. Chan denies the allegations in Paragraph 39 of Plaintiff's Complaint.

4 **COUNT 3**

5 40. Chan incorporates by reference his responses to Paragraphs 1 through 39
6 of their Answer and Defenses as if set forth fully herein.

7 41. Chan denies the allegation as stated in Paragraph 41 of Plaintiff's
8 Complaint.

9 42. The allegations contained in paragraph 5 of Plaintiff's Complaint are
10 legal conclusions to which no response is required. To the extent that a response is
11 required, the allegations contained in Paragraph 5 of Plaintiff's Complaint are
12 denied.

13 43. Chan denies the allegations in Paragraph 43 of Plaintiff's Complaint.

14 44. Chan denies the allegations in Paragraph 44 of Plaintiff's Complaint.

15 45. Chan denies the allegations in Paragraph 45 of Plaintiff's Complaint.

16 46. Chan denies the allegation as stated in Paragraph 46 of Plaintiff's
17 Complaint.

18 47. Chan denies the allegations in Paragraph 47 of Plaintiff's Complaint.

19 48. The allegations contained in paragraph 5 of Plaintiff's Complaint are
20 legal conclusions to which no response is required. To the extent that a response is
21 required, the allegations contained in Paragraph 5 of Plaintiff's Complaint are
22 denied.

23 49. Chan denies the allegations in Paragraph 49 of Plaintiff's Complaint.

24 All allegations not specifically admitted herein are denied.

25
26 **First Affirmative Defense**

1 The Complaint fails to state a claim upon which relief can be granted.

2 **Second Affirmative Defense**

3 Plaintiff's Claims are barred in whole, because of genericness of the claimed
4 trademark.

5 **Third Affirmative Defense**

6 Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

7 **Fourth Affirmative Defense**

8 Plaintiff's claims are barred, in whole or in part, by the doctrine of
9 acquiescence.

10 **Fifth Affirmative Defense**

11 Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

12 **Sixth Affirmative Defense**

13 Plaintiff's claims are barred, in whole or in part, by the Plaintiff's
14 abandonment of the mark.

15 **Seventh Affirmative Defense**

16 Plaintiff's claims are barred, in whole or in part, by the Statute of
17 Limitations.

18 **Eighth Affirmative Defense**

19 There is no causal link between Chan's alleged actions and any damages
20 allegedly sustained by Plaintiff

21 **Ninth Affirmative Defense**

22 Chan has not acted in a manner which encompasses malicious, fraudulent,
23 dilatorial, or willful behavior.

24 **Tenth Affirmative Defense**

25 Plaintiff's claims are barred, in whole or in part, by the doctrine of fair use.
26

1
2 We beg the court's indulgence in our express reservation of further defenses
3 allowed in applicable laws, as yet unknown to Chan that may be asserted in this
4 matter.

5 We beg the court's indulgence in our express reservation of any
6 COUNTERCLAIM to be filed to the extent allowed in applicable laws, as yet
7 unfilled to Chan that may be asserted in this matter.
8

9 **WHEREFORE**, Defendant requests that this Court dismiss the Complaint
10 in its entirety; that the Court award to Chan his costs and reasonable attorney's fees
11 incurred where such attorneys were hired to provide counsel for the Defendant
12 filing pro se, while defending himself against Plaintiff's claims' and for such
13 further relief as the Court deems just and proper; and Defendant requests that this
14 case be tried before a jury.
15

16
17
18 Respectfully submitted, this 23rd day of November, 2009.

19
20 
21

22 Steven Chan
23 720 Center Street
24 Costa Mesa, CA 92627
25
26

IN THE UNITED STATES DISTRICT COURT
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CIVIL ACTION FILE NO.

1:09-CV-1880

CERTIFICATE OF SERVICE

This is to certify that I have this day manually filed by placing into a package, sent by Federal Express Next Day Air tracking number 791248345762, the foregoing **ANSWER AND AFFIRMATIVE DEFENSES** with the Clerk of Court. The Clerk of Court will use the CM/ECF system to automatically send e-mail notification of such filing to the following attorneys of record:

J. Tucker Barr
Arnold Golden Gregory LLP
171 17th Street, N.W., Suite 2100
Atlanta, GA 30363-1031
Tel: (404) 873-8500
Fax: (404) 873-8501
Email: Tucker.barr@agg.com

Further, a copy has been placed in the US Mail, and sent to:

J. Tucker Barr
Arnold Golden Gregory LLP
171 17th Street, N.W., Suite 2100
Atlanta, GA 30363-1031
Tel: (404) 873-8500
Fax: (404) 873-8501
Email: Tucker.barr@agg.com

Dated, the 25th day of November, 2009

A handwritten signature in black ink, appearing to read 'Steven A. Chan', written over a horizontal line.

Steven A. Chan

Appearing *pro se*

2viavr@gmail.com

CERTIFICATE OF COMPLIANCE

Pursuant to Civil Local Rule 7.1D, this is to certify that the foregoing Answer and Affirmative defenses complies with the font and point selections approved by the Court in Civil Local Rule 5.1C. The foregoing Answer and Affirmative Defenses were prepared on computer using New Times Roman font (14 point).

DATED this 25th day of November, 2009

A handwritten signature in black ink, appearing to be 'S. Chan', written over a horizontal line.

Steven Chan

Appearing *pro se*

2viavr@gmail.com